ORIGINAL

0000081194

GLIEGE LAW OFFICES, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388
(928) 226-8333

John G. Gliege (#003644)
Stephanie J. Gliege (#022465)
Attorneys for the Complainants

32

BEFORE THE ARIZONA CORPORATION COMMISSION

RAYMOND R. PUGEL AND JULIE B. PUGEL, husband and wife as trustees of THE RAYMOND R. PUGEL and JULIE B. PUGEL FAMILY TRUST, and ROBERT RANDALL and SALLY RANDALL, husband and wife Complainants, v. PINE WATER COMPANY, an Arizona Corporation Respondent..	DOCKET NO. W-03512A-06-0407
ASSET TRUST MANAGEMENT, CORP. Complainants, v. PINE WATER COMPANY, an Arizona Corporation Respondent.	DOCKET NO.W-03512A-06 -0613
JAMES HILL and SIOUX HILL, husband and wife and as trustees of THE HILL FAMILY TRUST, Complainants, v. PINE WATER COMPANY, an Arizona Corporation Respondent.	DOCKET NO. W-03512A-07-0100

NOTICE OF FILING HARRY JONES REBUTTAL TESTIMONY

BRENT WEEKES, **Complainants,** **v.** **PINE WATER COMPANY, an Arizona Corporation** **Respondent.**	**DOCKET NO. W-03512A-07-0019**

Complainants, RAYMOND R. PUGEL AND JULIE B. PUGEL, as trustees of THE RAYMOND R. PUGEL and JULIE B. PUGEL FAMILY TRUST, and ROBERT RANDALL and SALLY RANDALL, ASSET TRUST MANAGEMENT, and BRENT WEEKES, hereby submit the Notice of Filing Rebuttal Testimony in this referenced matter. Attached hereto as Exhibit A is the Rebuttal Testimony of Harry Jones.

RESPECTFULLY SUBMITTED this 24th day of January, 2008.

GLIEGE LAW OFFICES, PLLC

/s/ John G. Gliege
John G. Gliege
Attorney for Complainants,
Pugel et al., Asset Trust Management, and Brent Weekes

Original and 19 copies mailed/delivered
This 24th day of January, 2008 to:

Arizona Corporation Commission
Attn: Docket Control
1200 W. Washington
Phoenix, AZ 85007

Copies of the foregoing mailed/delivered
This 24th day of January, 2008 to:

Kevin O. Torrey
Attorney, Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Christopher Kempley, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Jay L. Shapiro
Fennemore Craig
3003 North Central Ave. Ste 2600
Phoenix, AZ 85012-2913

David W. Davis, ESQ.
Turley, Swan & Childers, P.C.
3101 N. Central, Suite 1300
Phoenix, AZ 85012-2643

Robert M. Cassaro
PO Box 1522
Pine, AZ 85544

William F. Haney
3018 E. Mallory St.
Mesa, AZ 85213

Barbara Hall
PO Box 2198
Pine, AZ 85544

EXHIBIT A

Rebuttal Testimony

Of

Harry Jones

Rebuttal Testimony of Harry D. Jones

Question: Please state your name and business address.

Answer: Harry D. Jones, HC7 Box 363, Payson, AZ 85541

Q. By whom are you employed?

A. HDJ Management, LLC my wholly owned consulting firm which is engaged by (a) Gila County as the water issues consultant in Northern Gila County; (b) as District Manager of Pine Creek Canyon DWID (at Portal IV in Pine); and (c) as District Manager of Tonto Village DWID near Kohl's Ranch.

Q. In what capacity are you testifying in this proceeding?

A. As a consultant to Tommie Cline Martin, Supervisor of District 1 of Gila County, Arizona, the supervisory district in which the Pine Water Company (PWCo) and complainants are located.

Q. What is your educational background applicable to this proceeding?

A. I have a Masters of Business Administration and a Ph.D in economics and finance.

Q. How long have you been active in water issues and water district management in Gila County?

A. I have been Chairman of the Rim Trail DWID off and on for 28 years (currently in the middle of my second consecutive four year term). For the last four and one-half years, I have been Gila County's representative and voting partner for the Mogollon Rim Water Resources Management Study, a $600,000 joint venture of Gila County, the Town of Payson, and the Bureau of Reclamation. On behalf of the Gila County Board of Supervisors, I was appointed to be the operating manager of the Pine/Strawberry Water Improvement District for 15 months in 2003-2004, at the time of PWCo's last rate case where the District was an intervener.

Q. What is the purpose of the testimony you are about to give?

A. To rebut parts of the testimony of Robert Hardcastle and Steven M. Olea that has been presented in this docket.

Q. What are the general areas of testimony that you intend to offer rebuttal testimony for?

A. For Mr. Olea's testimony, I will first discuss the availability of information on potential water supplies in the Pine area; secondly, I will discuss regulatory policy and what I believe is in the public interest as applied to PWCo. For Mr. Hardcastle's testimony, I will discuss topics page by page from his testimony.

Q. How will you present this information?

A. I will refer to page numbers of transcripts and to the lines on that page where transcripts are available, and to dates of testimony where transcripts are not yet available.

Availability of Information on Potential Water Supplies in Pine

Q. Do Staff and Mr. Olea seem to feel that adequate water is likely to exist under Pine at this time?

A. Yes, finally after many years of misinformation on their part.

Q. What indications have there been over the years as to the likelihood of adequate water under Pine?

A. All parties seem to agree the upper aquifers in Pine are limited because of geological structures and shortages of moisture available to replenish the water. However, it is important to remember that over the last 11+ years, all four of the Domestic Water Improvement Districts ("DWID") that are contiguous with, or are surrounded by, the Pine Water Company ("PWCo") CC&N have been able to develop adequate resources from even the shallow aquifers that the Company has often claimed should have been used to serve their own CC&N area. In addition, one DWID (Strawberry Hollow) has experienced great success in the deep aquifer, and one private land owner (Pugel/Randall) has also fully developed a single deep well that has availably resources

equal to approximately 75% of the total annual water distributed by all the wells under control of PWCo.

Q. What are the specific facts related to the four DWIDs and other private entities which have found adequate water resources, while PWCo over the same period of time has not had nearly the same success?

A. To be specific, each of the districts needs to be discussed. The first is Strawberry Hollow DWID (SHDWID) which received a 100 year water adequacy designation in 2005, with the adequacy determined by using only 25% of the water available from the wells. Of the excess water not required in the Strawberry Hollow District, 56% of that water was offered to other local water purveyors as part of the adequacy application in 2005. Strawberry Hollow historically had a shallow well. In 2002 a deep well was drilled, further developed and tested, over a two year period. The deep well is located within 100' of the PWCo's CC&N, so it is not considered a remote location. The combination of two wells allowed the SHDWID to be granted the 100 year adequacy a year or so later, being only the second 100 year water adequacy subdivision in all of Gila County. Only in the last few months does it appear Mr. Olea and Staff has indicated any confidence that these additional water resources really existed. Staff has apparently never been successful (or maybe even tried as part of "protecting the public interest") to convince the Commissioners to place regulatory orders on the Company that would require PWCo to make a reasonable agreement with SHDWID to purchase the excess water (now reported by Mr. Hardcastle to be only $8/1000 gallons compared to paying $60+/1000 gallons to haul water). This lack of progress in purchasing water resources under water sharing agreements and the lack of regulatory involvement to make it happen does not appear to be "in the public interest"..

Q. What is the second DWID to discuss?

A. Solitude Trails DWID (STDWID) has been successfully operated since 1996 with two wells located within the PWCo CC&N, not within the Solitude Trails subdivision. The wells are operated by PWCo under a water sharing and wheeling (transport) type agreement that allows for

sale of all excess water (approximately 90% of the total production most years) to PWCo. The excess water taken from Solitude Trails has amounted to much as 22% of the total supply distributed by PWC; however, PWCo has failed to take all the water available over the last few years, dropping down to only 10% of total supply distributed by PWC. For some unknown reason in the summer of 2007, PWCo has again started taking about 1,000,000 gallons per month rather than the 500,000/month average over the last several years, all right in the middle of the worst drought in modern Arizona history. Obviously these wells (both of which are in the upper aquifer) continue to produce at historical levels.

Mark Fumusa, Chairman of the STDWID has notified Mr. Olea and the Staff on numerous occasions in writing, at ACC hearings, at ACC public comment sessions, and at Pine/Strawberry Domestic Water Improvement District (P/SDWID) meetings that this negligence of PWCo not taking full advantage of these additional supplies is occurring. This water from STDWID is available at $1.00/1000 gallons compared to hauled water at $60-$68/1000 gallons.

My concern is why Mr. Olea and Staff have not reacted to the fact this STDWID water is going unused, in violation of the order 67166 requiring PWCo to take all available local water, including the STDWID water, before any hauling occurs. By not using this supply (about 6-7 million gallons per year available by turning on the well), the Pine rate payers have incurred inconvenience, water outages, and over $200,000 in hauling charges just in the summer of 2007..

Good regulatory oversight should not have allowed this water use shortfall to occur, since it was pointed out by credible parties to the ACC many times over the last few years. One can easily question why (overworked or possibly underfunded) the Staff might consistently miss this type of opportunity for effective regulatory control of this CC&N holder.

Q. What is the third DWID to discuss?

A. The Pine Creek Canyon DWID (PCCDWID) at Portals IV abuts the CC&N at the north edge of Pine. The District's main operating well is in the shallow aquifer and has successfully provided

resources for the existing 83 homes for 14+ years. A $60,000 water and wastewater resource study dated 11-15-07 indicated adequate water resources are available for over 294 planned residential units, with an expected build out of only 214 units. The original developers of Portals IV (same developers as Portal I, II, and III) are the same ones that have developed the wells in the other areas, with those well in the other Portal communities turned over to PWCo and its predecessors for service to all areas served by PWCo. Again, this is another example of DWIDs getting the job done and staying ahead of the game, while PWCo can't seem to develop, bring online, store or transport adequate resources on its own.

Q. What is the fourth DWID to discuss?

A. The Pine Water Association DWID (PWADWID - several different names over 120 years) has a combination of wells and surface water from Pine Creek. It became a DWID in recent years and has been able to provide adequate service with systems that have been steadily upgraded over the decades. Adequate water resources are in place and are properly maintained. It is another example of a successful water operation that is fully surrounded by the CC&N.

Q. What about the Milk Ranch well as another privately developed well success story?

A. The Milk Ranch well is another well documented and tested water development project that generates 150 gallons per minute, with detailed test results provided to PWCo more than one year ago. These results have seemingly been ignored by PWCo.

Q. Are these DWIDs, the citizen homeowners, local businesses and vacant landowners effected by the fact the ACC has not been able to effectively regulate PWCo so it provides adequate service?

A. Yes, home values, resale opportunities, what could be a vibrant business climate, and pride of ownership throughout Pine (including the DWIDs) are all diminished by the very poor water reputation existing in the Pine and Strawberry communities.

Q. Are there other examples of why the Staff and Mr. Olea should have had more awareness of the real water situation in Pine?

A. On 1-10-08, Mr. Olea claimed he had never sat down with the personnel who were conducting and producing the Mogollon Rim Water Resources Management Study ("MRWRMS"). This project is a joint venture of Gila County, the Town of Payson, and the Bureau of Reclamation that discusses in detail the overall water issues throughout the Mogollon Rim Country. Despite Mr. Olea's memory, I did arranged a meeting on October 14, 2005 that Mr. Olea attended, for which he had sent a follow-up letter to the Bureau of Reclamation relate to the topics discussed. In the ACC conference room along with Mr. Olea was Bill Remick, Hydrologist of Arizona Dept. of Water Resources (ADWR); Leslie Meyers, Program Manager, Bureau of Reclamation; Marvin Murray, Project Consultant, Bureau of Reclamation; Marlin Scott, ACC Engineer; Mike Ploughe, Town of Payson Hydrogeologist; and Harry Jones, Gila County Water Consultant. Apparently Mr. Olea did not pay attention or remember discussions and illustrations during this meeting that showed detailed geological mapping, sites of deep wells, a discussion of the USGS study by John Parker indicating deep water sources in the Mogollon Rim area (including Pine) that are recharged by leakage from the "C" aquifer above the Mogollon Rim. Recently thereafter, I even supplied follow-up documentation that Staff had requested.

In addition, on 1-10-08 or 1-11-08 during cross examination by Mr. Davis, Mr. Olea claimed he had seen no study of deep wells that dealt with 100 year adequacy. This is in error, or he just paid no attention to almost 50% of the pages in the November 2005 Water Alternatives Report presented to the ACC by PWCo that he and his Staff analyzed and issued an opinion about. Olea claimed during his testimony on 1-11-08 that Mr. Hardcastle rated one alternative a "5" (lowest) , while the Staff changed the rating to a "1" (highest).

Regulatory Policies and the Public Interest

Q. How do Mr. Olea's positions on minimum water storage stack up against the actual practices of successful operators?

A. Also, on 1-10-08 or 1-11-08, during cross examination by Mr. Gliege, Mr. Olea

stated that the Arizona Dept. of Environmental Quality (ADEQ) storage standard is based on the average day usage in a peak month. On page 9 of his Second Supplemental Testimony, he indicates there can even be a further reduction in required storage by deducting the water production of the pumping/filtering system, excluding the highest water production source in the system. If some units of ADEQ are using those standard, it seems others may be using the standard in Engineering Bulletin #10 dated May 1978, which states that minimum storage requirements are based on average daily demand for the year, not the average day in a peak month. Bulletin #10 indicates in the first full paragraph on page 6-4 that "The minimum storage capacity for systems not providing fire protection should approximate the annual average daily consumption." "This capacity may be reduced when the source and treatment facilities have sufficient capacity, with standby power capability, to supplement peak demands of the system." Regardless of which of the two standards (or both) is being used at ADEQ, the standards used do not allow for adequate storage in systems that have large spikes in demand, which is the case in almost every community in the Rim Country. Rather than rely on the inadequate standards of ADEQ, it appears Mr. Olea needs to evaluate the actual practices of successful and experienced operators throughout the Rim County.

Under the formulae dictated by Bulletin #10, the situation in PWCo (as supported by Mr. Olea and Staff) can be illustrated and compared to other systems. Demand in Pine is about 56,000,000 gallons/year, divided by 365 days = 153,424 gallons daily average. With about 970,000 gallons of storage, the claims by Olea and Hardcastle that claim PWCo has more than four times the ADEQ requirement are accurate. However, the ADEQ minimum requirement is highly inadequate, except possibly for systems that have no significant spikes in demand and a steady predictable demand. The ADEQ standard within Bulletin #10, as it currently stands on the Department's website, is not complete, is not the basis for industry practice, is not in the public interest, and should not be followed in the Mogollon Rim communities of Pine and Strawberry for the following reasons:

- Standard is 30 years old and outdated.

- No consideration is given to spikes in demand in Bulletin #10. If peak- and short-term water demand is absolutely required to determine adequacy of wells, it certainly should be a required factor in determining adequacy of storage capacity.
- No consideration is given to recovery rates (time to refill tanks) by pumping from well or treatment plants.
- The ADEQ standards do not match up with practices of successful communities in the Rim Country, such as Payson, where water management faces many of the same challenges and is consider to be a model system in Arizona.

Following is a water storage comparison for Payson and Pine, with some comparative factors from the four domestic water improvement districts.

Water Storage Comparisons*

-2007-

Factor	Town of Payson	Pine Water Co
Total Storage (gallons)	8,100,000	920,000
Total Meters	8,000	2,000
Normal Population	15,000	2,000
Peak Population	30,000	6,000
Maximum Pumping Rate (gpm)	4,000	200
Maximum Pumping Rate/day (gallons)	5,760,000	288,000
Normal Demand/day-Winter (gallons)	1,000,000	66,000
Normal Demand/day-Summer (gallons)	2,000,000	266,000
Peak Demand/day-Summer Weekend/ Events (gallons)	+ 50% 3,000,000	+75% 465,000
Storage per Meter (gallons)	1,012	460
Storage/Person-Normal Population (gallons)	540	460

Factor	Town of Payson	Pine Water Co
Storage/Person-Peak Population (gallons)	270	153
Times Maximum Pumping Rate Could Cover Peak Demand/day	1.9	.6
Days at Maximum Pumping Rate to Refill all Tanks	1.4	3.2
Storage per Meter in Other Rim Country Communities (gallons):		
Strawberry Hollow DWID at build-out	1,795	
Solitude Trails DWID at build-out	1,282	
Portals IV DWID at build-out	1,168	
Rim Trail DWID	944	

Sources: Town of Payson—Mike Ploughe, Town Hydrogeologist.

Pine Water Co.—ACC Annual Report plus estimates

Others: Mogollon Rim Water Resources Management Study

Facts and conclusions from the numbers are:

(a) Other communities in the area take peak demands into account, and they also consider their pumping rates in determining storage capacity.

(b) Storage per water meter is more than twice as much in Payson when compared to PWCo.

(c) Storage per person at max populations on weekends is 76% higher in Payson than Pine.

(d) Percentagewise, Pine is estimated to have more of a spike in demand (triple) than Payson (double), probably due to more craft shows, festivals, and more part-time residents.

(e) In Payson, maximum pumping rates can cover maximum demand spikes three times faster than in Pine.

(f) In Pine, the number of days (at maximum pumping rates) that its takes to refill all tanks is 2.3 times longer than in Payson.

(g) Storage in Pine is 460 gal/meter; in Payson 1,012 gal/meter; in Strawberry Hollow DWID 1,795 gal/meter (at build-out); in Solitude Trails DWID 1,282 gal/meter (at build out); at Portals IV DWID 1,168 gal/meter (at build-out); and at Rim Trail DWID 944 gal/meter (has both East Verde River surface water and well water to recover with at the same time).

(g) With PWCo at more than four times the ADEQ standard, PWCo still has the lowest reserves when compared to Payson and the four DWIDs. This strongly suggests that the standard in question must be completely re-evaluated as it applies to Pine.

(h) From virtually every standard of measurement, Mr. Olea and the ACC Staff are allowing PWCo to not follow current industry practices of other water systems in the area, all of which have been professionally engineered and are successfully operated while giving major consideration to peak demands, and at many times the ADEQ standard for water storage.

(i) Mr. Olea and his Staff, and PWCo, are hiding behind the inadequate standards of ADEQ that result in vacant lot owners, current rate-payers and business owners being subjected to moratoriums, water outages, staged demand curtailments, and massive hauling charges that greatly limit property use, property values and ultimately quality of life.

Q. Has Mr. Olea and the Staff been too sympathetic to PWCo and its water supply situation for too long?

A. Apparently so. He and the Staff have seemingly bought the Company's excuses and the story and outdated standards of the understaffed folks at ADWR and ADEQ for too long. Mr. Olea and his Staff have not paid enough attention to the reported field practices of successful water system operations in the Rim Country prior to offering recommendations to the Commissioners and the Administrative Law Judge. On 1-10-08 or 1-11-08 Mr. Olea has testified that there is not Staff available to review all submissions, so the policy is to take what PWCo submits at face value.

On 1-11-08 during cross examination by Mr. Shapiro, Mr. Olea claimed that over the years there has never been enough water "supply" in Pine, and new data has only come to light very recently. The fact is, Mr. Olea and Staff should have known for several years that conclusion of "no water under Pine" was not correct, and the appropriate answer is that PWCo and the community lacks simply from water "development", whether from the shallow or deep aquifers. The success of all of the

DWIDs has been known for 11+ years in all cases. The deep sources have been confirmed over the last eight years with a record of three for three successful deep drillings at the (1) Strawberry borehole in 1999/2000 (an 1,890 foot exploratory hole with water at about 1400 feet); (2) Strawberry Hollow in 2002/2003 (a 1,320 foot producing well with water at about 908 feet; and (3) Milk Ranch well in 2005 (a 1,050 foot thoroughly tested well with water at about 650 feet.

Based on the above information, it continues to appear that Mr. Olea and his Staff are not paying reasonable attention to the details and industry activities relate to water in the Rim Country even though experts from the Bureau of Reclamation, the technical leads for the MRWRMS, the Hydrogeologist from the Town of Payson (most recognized expert because of his success with designating the location of and development of the two deep privately owned wells in Pine) have all tried to inform him and the Staff during meetings and other ACC hearings. The not listening, not watching, and not learning from the local and regional experts has resulted in the ACC Staff continuing to rely on less than up to date State of Arizona entities that are "behind the curve" in terms of water situations in the Pine area over the last 10 years. This outdated and less than accurate information has been used to justify long-standing and improper positions on water matters critical to Rim County communities, especially the communities of Pine and Strawberry. Problems caused this type of regulatory oversight and lack of up to date standards are not in the public interest. In addition, it is not in the public interest to treat all areas of the state the same (the required water storage for instance) when differences such as stable vs. transient populations, high vs. low demand spikes exist, etc. One size fits all rules and policies do not generally work well in today's business and regulatory environment.

Q. Should the potential change in real property values caused by having adequate or inadequate water supplies available to the properties in the CC&N be a factor in determining whether the public interest is being served?

A. Absolutely. Mr. Olea did say on 1-10-08 or 1-11-08, under cross examination by Mr. Davis that he gave no consideration to increased property values if a community had a 100 year adequacy of

water availability designation. It is certainly not the purview of the ACC to try to manipulate market values of properties by its regulatory processes; however, the ACC should not permit a public service corporation to take consistent actions or inactions (like not adequately trying to develop reasonable water resource capacity) that tend to diminish or stagnate real property values. Therefore, reasonable consideration of effects of ACC policies on real property values should be considered when assessing public policy and how well it serves the public interest.

Q. Will the public interest be adequately served if the complainants are not allowed outside the CC&N and the current practices of PWCo related to the complainants' situations are allowed to continue?

A. Absolutely not. If the CC&N holder is allowed to continue "as is" and the complainants are not let out, the potential for new well and water resource development by the private sector will likely fall to zero. Large scale domestic water development has unfairly and generally become the responsibility of the private sector in Pine. If the CC&N holder cannot develop water resources on their own (as is the case with PWCo), and if the private sector is to be encouraged to explore for new water to better guarantee its future water adequacy, to enhance the values of their own real property, to make excess water available to a CC&N holder under water sharing agreements, or to secure water for a newly created DWID, then that private water exploration activity should encouraged by the ACC by letting the Complainants out of the CC&N in this matter. If not, no private individual is going to want to ever make an investment in his property or community the way Mr. Peterson of SHDWID or Mr. Pugel/Randall of Milk Ranch have done in this case.

The evidence as to the benefit of this logic for getting water resources "in hand" is that over the last 25 years the local real estate subdivision developers have formed three new DWIDs to serve themselves, rather than become a part of the PWCo and its predecessor monopolies. The unfortunate fact that the complainants happen to currently be stuck within PWCo's CC&N is why they are having to go through multiple lawsuits and legal proceedings. If they are let out of the CC&N, I fully believe they will form one or more well managed, financially sound DWIDs that will drill additional wells that will be able to serve their own properties, and most likely have

excess water available for use by the CC&N holder for the rest of Pine assuming of course that in the eyes of the complainants, that an entity more trustworthy and competent than Brooke is available to accept and effectively store and/or distribute the excess water.

Mr. Olea and the ACC Staff need to realize the free market, entrepreneurial system has distinct benefits, is not a revolutionary idea and its operation and benefits should not be discouraged. Free market activities by the private sector and activities of public service corporations can exist side-by-side if the public service corporation is competent, trusted and properly regulated. However, the resulting situation and unsatisfactory performance of PWCo, Strawberry Water Company and the ACC (in its regulatory role) appears to be beyond repair in the minds of many Pine and Strawberry real property owners. Many of the most active community members want to form a "domestic" district and control their own destiny, without Brooke and the ACC in their way.

Therefore, letting the Complainants out of the CC&N would best serve the "public interest" since it is likely more total water would be available in these communities if the private sector was not further discouraged. The public interest could alternatively be served by (1) the ACC forcing a sale of the assets of the PWCo to a newly created "Domestic Water Improvement District", (2) by simply taking the CC&N monopoly license away from PWCo and SWCo and putting it in the hands of another Public Service Corporation that is known to run a more trusted and professional organization, or (3) imposing major operational and financial orders on PWCo and SWCo related to immediately (a) requiring development of several new wells, (b) requiring short-term major investments in system storage and infrastructure repairs, and (c) requiring new call center operations, all subject to close monitoring of PWCo to measure progress and to issuance of meaningful fines and penalties for non-performance.

Q. Is it in the public interest to severely restrict for long periods of time the use of private properties?

A. Mr. Olea and the Staff seem to give no real consideration to the fundamental issue of denial of private property rights, and the net result of the effective taking of property without due

compensation because no water from the regulated monopolist is available to the lands. The focus of the Staff and PWCo appears to be only on the current customers with little regard for the vacant lot owners and the owners of land not yet subdivided. The public interest is not served by ignoring the 40%-50% of the undeveloped acreage and lots in Pine and the 30- 40% of undeveloped acreage and lots in Strawberry. Many owners of these parcels are still relatively silent, but they are being organized and will become increasingly politically active if their property rights continue to be denied year after year. The recall of PSWID District Board members is apparently only the first step in their quest for local self control of their properties.

Rebuttal to Testimony of Robert Hardcastle

Pages/lines

933 22-25

934 1-3

934 14-24 Mr. Hardcastle makes the statement related to the purpose of the Tetra Tech study as "being able to maximize the productivity of the Milk Ranch ("MR") well, and being able to utilize it for the benefit of all customer of Pine". Basically, Mr. Hardcastle is saying "what is the cost to hook up all of the Milk Ranch water to all the customers of Pine and Strawberry". By specifying the objective of the study that way, he did not give any consideration to the concept that "half a loaf is better than no loaf at all". Rather than asking the engineering firm to tell him what it costs to take the water to the 300K tank over a mile away, he should have evaluated "what does it cost to use the Milk Ranch well to help solve the water problem for **some** or all of Pine and Strawberry". Mr. Hardcastle needs to give adequate consideration to the fact that with the MR well in the system, he will likely gain substantial relief for his wells in north Pine and Strawberry since water will not need to be sent downhill from north Pine and Strawberry to serve the southern part of Pine where the MR well is located.

If the Milk Ranch well could serve 25%-50% of the meters in the CC&N, he should look at the cost of making that type hookup and not limit the cost to a "home-run" for the whole system. In fact, the part of

Pine that suffers the most from water outages is in the area that could likely be served by the Milk Ranch well if it was hooked into the main that runs within a few hundred feet of the well. Narrowly specifying the purpose of the Tetra Tech study the way he did automatically (a) made the cost of the Milk Ranch well hookup unreasonably high, (b) helps Mr. Hardcastle to justify not selecting the MR well alternative, and (c) allows Mr. Hardcastle to strengthen the arguments that the K2 project is a "solution in hand", apparently aimed at allowing the Company and the Staff to more strongly recommend to the Commissioners and the Administrative Law Judge that the CC&N should not be "sliced up" because adequate water can come from the K2, and that the Milk Ranch well is too costly to hook into the existing system.

Keeping the CC&N intact does not serve the community any better, although it probably makes for a higher value of the combined Pine Water Company ("PWCo") and Strawberry Water Company ("SWCo") because of a greater number of potential hookups. The number of potential meters is important to Brooke Utilities, Inc. ("BUI") because if the Pine and Strawberry companies or assets are ever sold, BUI as the shareholder, will benefit since water companies are often sold on the basis of meter counts, times a negotiated price.

938 9-10

940 8-18

941 21-25

942 4-13

The discussion on these pages between Mr. Hardcastle and Judge Nodes relates to why PWCo agreed to the K2 contract without first making close comparisons of the pros and cons of the K2 project and the MR well. The going forward with the K2 agreement prior to conducting that comparative analysis indicates a lack of due diligence or possible deliberate attempt to avoid facts that may lead to a different conclusion. Mr. Hardcastle's excuse for not aggressively pursuing that comparison (not exactly knowing the cost of the Pugel water) is weak. He could have estimated those costs, along with what he thought costs for operations and depreciation would be; however it appears he did not want to show the MR well had any possibility of being used (rule it out on too expensive to hook up), since the K2 is his

trump card (a solution in hand) to keep Pugel/Randall, et. al. from exiting the CC&N. This failure to fully and professionally consider other reasonable alternatives is a prime example of the lack of business judgment and due diligence efforts that has consistently plagued Pine and Strawberry water companies. Also see 1122-1127 below.

942 23-25

943 1-10 This discussion between Judge Nodes and Mr. Hardcastle is a good example of PWCo constantly seeking to shift the blame for a problem created by PWCo to others. In this particular case, the company is shifting the blame for poor consumer support of the K2 project to the PSWID for not taking into consideration the opposition of Strawberry residents to the outright taking of "their" water.

965 16-25

966 1-2 Mr. Hardcastle's whole answer at this point of testimony was mischaracterized. His answer at 965 16-25 that "you did not recover anything through rates" for Project Magnolia is true; however BUI (an unregulated private company) made massive recovery of operational profits by booking the cost of the $449,000 pipeline (actually started by PWCo) into BUI, and then charging PWCo 6.8 times its actual costs of $34,000 per year for use of the pipeline ($15/1,000 gallons to move water downhill 1.8 miles, resulting in $533,000 of revenue to Brooke Utilities over 23 months). Hardcastle's answer "yes" that "didn't you always take the position that it was Brooke's asset until ordered otherwise by the Commission?" is a true answer; however the Commissioners didn't fall for his argument and ultimately the ACC (in the settlement agreement of 2004) ordered the unregulated BUI parent company to return ownership of the pipeline to PWCo. In addition to forcing BUI to return the pipeline to its rightful owner, the ACC required PWCo to exempt $267,000 of the $533,000 intercompany payable (resulting from use of the pipeline) from future rate increase applications.

Mr. Hardcastle' answer a 966 1-2 is also accurate, but extremely mischaracterized. Yes, Brooke built the pipeline, basically as project managers for their PWCo subsidiary company. Brooke did that on all projects because at the time (and maybe still today), PWCo had no employees, no trucks, no call-center, etc. (only in-ground infrastructure, wells, and tanks), so some entity needed to manage the construction

process, and that was BUI. The commissions did not buy the fact that actually doing the construction gave BUI any ownership of its subsidiary's asset.

1122-1127 The cross examination and discussion between Mr. Hardcastle and Mr. Davis (and at another time between Commissioner Mayes and Mr. Hardcastle) needs to be analyzed to gain insight to the meaning of the statement "we made a business judgment" that Mr. Hardcastle has used throughout the hearings. Also, this series of questions and answers also is reflective of the question of whether PWCo cares about trying to operate the Company at the lowest reasonable cost and in a prudent manner.

Business judgment is difficult to appraise; is highly different from industry to industry, especially related to specialized matters; but does have some common elements that can be evaluated. Judgment is centered on the activity of being able to make a decision or form an opinion objectively where action is required. In business, judgment is related to use of logic, to use of problem solving techniques (define, collect facts, develop alternatives, evaluate alternatives, select best alternative, install solutions, monitor results, and make adjustments), and to selecting and moving toward objectives. Financial analysis is a key part of applying logic to business decisions, recognizing that many other skills are used to carry out decisions. It seems Mr. Hardcastle lacked judgment this situation, since he was unable to justify his process for making the decision to move forward without considering some key factors and financial comparisons necessary to make a prudent and reasoned decision that would effect his company and customers for years to come. All managers and people do not have good judgment all of the time; however this situation seemed somewhat indicative of what occurs when under pressure of not looking forward, not investing, misleading others, slanting facts, not taking care of customers, not carrying out the intent of regulatory controls, etc., some of which are what PWCo has been accused of doing over the years. Also see 938 9-10 above

In addition to the judgment issues related to this particular decision process, it seems he may have been taking an action that was not reasonable and prudent for PWCo rate-payers. Spending $62 to $68 to haul water that is even remotely possible to buy at $8 or even $24 as suggested by Mr. Davis is certainly not

in the best interest of the current customers, especially when it may go on for long periods of time (weeks and months).

1292 18-19 The discussion about the November 2005Water Supply Alternatives Report, as required under Decision 66823, as prepared by PWCo is mischaracterized throughout the testimony. The statement made several times by Mr. Hardcastle that it is 27 or 28 alternatives is incorrect, since they are numbered only 1-21. The discussion that it was extensive and contained about 500 pages is misleading since about 45% of the pages were actually a copy of the Strawberry Hollow DWID 100 year water adequacy application which contained over 200 pages. Nearly half of the listed alternatives were taken from the JB-1 through JB-8 options developed by John Breninger (initial K2 negotiator and current Brooke Utility consultant) which were adopted as the official water development alternatives for the PSWID (all wells dealt with water to be taken from Strawberry to Pine).

Many of the alternatives were saddled with unrealistic cost estimates, often at 5 or 10 times costs of similar projects recently completed or similarly evaluated by the Town of Payson, using their normal cost projection templates. For example, the three deep well alternatives located within Strawberry (alternatives 2-4) ranged from $3.7 million to 4.7 million, while Mr. Hardcastle is today projecting a similar well structure at the K2 site in Strawberry at a maximum cost of $1.3 million for150 gpm production. Testimony in the current case has indicated actual costs of the 150 gpm Pugel/Randall well and the Strawberry Hollow wells to be about $250,000. Rankings of the three Strawberry deep well alternatives were at "5", the lowest possible rating in the study. Another indication of rankings being highly skewed for one reason or another was the Staff's recommendation to require PWCo to pursue an alternative the Company ranked a "5" (poor alternative) that the Staff ranked a "1" (best to pursue).

Any implication that the study was thoroughly analyzed by the Staff is a misnomer, even though the Commissioners' order for the study required "analysis and discussion" with all affected entities and stakeholders, i.e. meaning some participation and evaluation by Staff, Town of Payson, Gila County, Bureau of Reclamation, SRP, ADEQ, and ADWR, none of which, except staff, ever seemed to be confirmed (i.e. no peer review) after I had conversations with those parties. The after-the-fact peer

reviews by Gila County and the most important one by Mike Ploughe of Payson were apparently completely ignored by Staff and PWCo. My conclusion from two years ago, which still stands today, is that the PWCo report was thick, bulky, and contained lots of fluff, and lacked depth.

By avoiding the most critical evaluations of the report (Ploughe and Jones), both the PWCo and Staff left in tact the general conclusion that there were "no easy answers"; "under the best scenarios the hydrology is uncertain and the costs are substantial"; "clearly the implementation of solutions cannot take place in the traditional regulatory environment"; "future decision making requires the balancing of the tremendous risks with the speculative and potentially limited benefits of **any of the analyzed alternatives"**, Bottom line, if you don't want to invest any money or take any risks to solve the problem, it is easy to overstate expected cost, eliminate additional alternatives, and rank most everything "5-Poor" (13 of 21 alternatives).

1337 23-25

1338-1339

1488-1489 The discussion from pages 1337-1339 and again at 1488-1489 relate to the Company's belief that the problems of moratoria, disincentives to invest, high risk, high cost, etc. are the result of the regulators. Sure, some of the problem has to do with regulatory restrictions or requirements. However, this appears to me to go along with an apparent goal of the company to do its very best to regularly try to shift blame for everything that is wrong to other parties. Typical excuses over the years are (a) "no more water is to be found under Pine Arizona, i.e. blame God (proven wrong by adequate water at DWIDs and two deep wells with significant capacity); (b) the ACC is to blame for moratoria, staged water use restrictions, and hauling charges (i.e. PWCo shares no responsibility for the situation, and the Company did not ask to have the restrictions put on), and (c) Gila County Board of Supervisors allowed the formation of the neighboring water improvement districts that take the water that should flow into PWCo wells. In essence, it appears that the company is hiding behind the moratoriums and other excuses in an effort to avoid reasonable investments and risk taking required for public service corporations so that adequate service can be provided to current and future rate-payers.

1375-1376 The explanation about Strawberry Water Co. paying for water from wells owned by PWCo that was retained in the Strawberry community is misrepresented by Mr. Hardcastle. It seems Hardcastle wants everyone to believe just because SWCo pays the commodity rate to PWCo, everything is fair. The point to make here is the hauling rate is $60-$68 per 1,000 gallons, while the commodity rate from Pine charged to Strawberry is $9.045, a cost difference of $50-$60/1000, a significant cost difference the Pine residents are required to absorb. Also, the rate paid by Pine Water Co. to Payson Water Co when hauled from the Knoll's well in Star Valley is extremely profitable for Payson Water Co. since the average sale price of commodity water (water sold above the base rates) from Payson Water Co. is possibly about $4.00/1000 based on very little water sold at the top of the scale ($9.00+) with most water sold at $2.50-$3.75/1000 gallons. This all means Pine Water Co. customers are unfairly supplementing Strawberry Water Co and Payson Water Co. PWCo has the ability to recover water hauling charges from its customers on the following monthly bill, while Strawberry has no ability to recover charges for water hauling. Thus, it is very advantageous to make all hauling go to Pine, and none to Strawberry, saving SWCo about $50-$60/1,000 and costing the Pine rate-payer about $50/$60 per thousand gallons purchased that could have come down the Magnolia pipeline at about $2.50 per thousand.

1419 14-21 In regards to whether Mr. Richey ever met with Mr. Hardcastle in Richey's restaurant in Strawberry during the K2 negotiations, the answer of "no" given by Mr. Hardcastle needs to be clarified. During the early discussions for the K2 site, there were multi-page documents developed called MOU's (ultimately drafts 1-5 were essentially "letters of intent" or "term sheets"). Misters Richey, Suhr, Jones, Pugel, Cassaro, Paul, Hardcastle and several others were at a meeting in the back right-hand corner of the Mogollon Steakhouse owned by Richey. Because of frustration in making progress with the MOU (mainly developed between Hardcastle, Suhr and Breninger), Suhr asked Richey to become the lead party to help clarify numerous issues related to the MOU. Richey ran the meeting with Hardcastle, and the rest listened. Sometime after that meeting, the negotiating team of Richey and Suhr started with a whole new document, they ultimately called the "K2 agreement". The switching of names of the document, or the tossing out of the first five drafts and starting to develop a clean new document should not be interpreted as a separate transaction completely disconnected from the efforts related to reaching

agreement on use of the K2 site for water development activities. At that time, and for several months thereafter, Richey took the lead of the committee in trying to finalize an agreement for use of the K2 property as a well-site, but he was not yet a member of the PSWID Board. During the process of putting the agreement together over the next few months, Paul Paul and Bob Cassaro resigned from the Water Development Committee ("WDC") due their concerns of possible violations of the open meeting laws by the WDC.

1608 24-25

1609 1-11

1610 1-4 Mr. Hardcastle's statements at 1609 1-11 that the developers of the Milk Ranch well and SH3 "drilled those wells in those locations not because they had conducted a huge hydrological study for the area, they drilled those wells in those locations for exactly the same reasons that we are drilling the well in the K2 well (site) because they own the property." This statement is not true. The SH3 and MR well owners drilled at their selected sites because of the mapping of faults and other geological structures that Ploughe, old time community water people, and first drillers for Peterson used. Lots of maps and prior studies of the area were used to pick those sites. It is important to note, in addition to the prior maps, photos, etc. used for the two deep wells, we now have much more detailed geological maps and information about to be released as part of the deliverables of the Mogollon Rim Water Resources Management Study.

This statement by Hardcastle seems to illustrate his willingness to slant the truth about activities of others; or his lack of knowledge or investment of time or money to do the job right; or it simply indicates his policy on where to drill this deep K2 well was to only look at properties Brooke already owned. This policy illustrates his lack of appreciation for good geological studies, location of faults, and other procedures used by professions with long-term local experience in selection of drilling sites.

On 1-11-08, during cross examination by Mr. Shapiro, Mr. Olea claimed that over the years there has never been enough **"water supply"** in Pine, and new data has only come to light very recently. The truth is, it has been known for several years that assessment of the situation is incorrect, and the correct

answer is that Pine suffers from lacks from a lack of **"storage capacity"** and a lack of **"water development"** in both shallow aquifers and in deep aquifers that have been confirmed with a record of three-for-three successful drillings (1) at the Strawberry borehole in 1999/2000 (a 1890 foot exploratory hole with water at about 1400 feet), (2) at Strawberry Hollow in 2002/2003 (a 1320 foot producing well with water at about 908 feet), and (3) at the Milk Ranch well in 2005 in a 1,050 foot well with water at about 650 feet.

Q. Does this complete you testimony?

A. Yes.